

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. S-06/09-315  
 )  
 Appeal of )

# INTRODUCTION

The petitioner appeals a decision by the Office of Vermont Health Access (OVHA) denying her request for comprehensive orthodontia for her daughter under Dr. Dynasaur. The issue is whether her daughter's condition meets the criteria for prior authorization for orthodontia. The following decision is based upon the evidence admitted at and after a hearing and telephone status conferences.

## FINDINGS OF FACT

1. The petitioner's daughter is twelve years old.
2. On or about May 22, 2009 her daughter's orthodontist submitted a Prior Authorization Form for comprehensive orthodontia to OVHA. The orthodontist checked that she met three of the "minor criteria" for orthodontic treatment. No other "functional impairment" or "special medical consideration" was noted in those places on the request form.

3. OVHA, on its review of the materials, found that the girl met only one minor criterion (overjet of 8plus mm), and it sent the petitioner a notice of decision denying coverage on May 26, 2009. This decision was reviewed and affirmed by OVHA in a notice dated June 24, 2009.

4. A hearing was held on August 6, 2009. The hearing officer and the Department advised the petitioner to submit letters from her daughter's orthodontist and doctors detailing their disagreement, if any, with OVHA's assessment of the minor criteria, and stating any other medical condition that might indicate the need for orthodonture.

5. At a status conference held on October 8, 2009 the Department reported that it had not heard from any of the girl's medical providers. The Department agreed, however, that it would contact the girl's orthodontist to attempt to resolve the apparent dispute regarding the two other minor criteria the orthodontist had checked on the form.

6. At a telephone status conference held on November 5, 2009 the Department represented that it had spoken with the girl's orthodontist, and that he had essentially agreed with the Department's assessment. On November 12, the Department submitted the following case note regarding this contact:

On November 02, 2009, I called (child's) orthodontic provider (name). We discussed her orthodontic condition. He stated that he is not disputing the OVHA orthodontic consultant findings where the consultant found the (child) only met one minor criteria (overjet of 8+mm). (Name) feels that (child) falls in a "gray area" and is concerned about the "protrusive" appearance of her bite. He didn't feel that (child) would be irreversibly harmed if she didn't receive orthodontic treatment. (Name) did however say (child) could have some psychological issues in the future due to her malocclusion. I am still upholding the original decision to deny the request for interceptive orthodontic treatment based on the fact that (child) only meets one minor criteria and there is no evidence that it is medically necessary for (child) to have orthodontic treatment.

7. Based on the above, it is found that the petitioner's daughter has not demonstrated that she meets more than one of the minor criteria (see *infra*), and that she has not sufficiently shown any other medical basis for dentures at this time.

#### ORDER

OVHA's decision is affirmed.

#### REASONS

States are required to provide dental services to Medicaid recipients under the age of twenty-one if certain criteria are met as part of the EPSDT requirements. Dental services are defined at 42 U.S.C. § 1396d(r)(3) to include services:

(B) which shall at a minimum include relief of pain and infections, restoration of teeth, and maintenance of dental health.

To meet EPSDT requirements, Vermont has adopted regulations found at M622 that state, in part:

M622.1 Definition

Medically necessary orthodontic treatment involves the use of one or more prosthetic devices to correct a severe malocclusion.

M622.4 Conditions for Coverage

To be considered medically necessary, the beneficiary's condition must have one major or two minor malocclusions according to diagnostic criteria adopted by the department's dental consultant or if otherwise necessary under EPSDT found at M100. (emphasis added)

The treating orthodontist or dentist completes a Prior Authorization Request Form that addresses the state's criteria. This form first asks for the following diagnostic information:

Major Criteria

Cleft palate  
2 impacted cuspids

Severe Cranio-Facial Anomaly

Minor Criteria

1 impacted cuspid  
2 blocked cuspids per arch  
(deficient by at least 1/3  
of needed space)  
3 congenitally missing  
teeth per arch (excluding  
third molars)  
Open bite 4+teeth, per  
arch  
Crowding per arch (10+mm)  
Anterior crossbite  
(3+teeth)  
Posterior crossbite  
(3+teeth)

Traumatic deep bite  
impinging on palate  
Overjet 8+mm (measured  
from labial to labial)

Eligibility for comprehensive orthodontic treatment requires that the malocclusion be severe enough to meet a minimum of **1** major or **2** minor diagnostic criteria.

In the petitioner's case, as noted above, her daughter does not meet the criteria of either one major or two minor criteria. OVHA only found one minor criteria, and it does not appear that the girl's orthodontist disagrees.

However, the petitioner has been advised that Medicaid coverage for orthodonture does not depend exclusively on these criteria. The form also asks whether there are other "functional impairments" or "special medical considerations". Under the regulations orthodontia is considered medically necessary when there is "a determination that a service is needed to achieve proper growth and development or prevent the worsening of a health condition".

Unfortunately, it cannot be concluded that the petitioner has presented sufficient evidence to show that orthodontia is medically necessary for her daughter. She has been advised, however, that she is free to reapply for coverage if *any* of her daughter's doctors will document any other medical need, *either physical or psychological*.

At this point, however, it appears that the evidence submitted and the regulations support OVHA's position. Thus the Board is bound to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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